

DECISION

*W.C. Russell
Pl. 2*
120172

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-208557

DATE: December 21, 1982

MATTER OF: HSQ Technology

DIGEST:

Bid was properly rejected as nonresponsive where the descriptive literature furnished with it, required for evaluation purposes, showed that the item offered did not meet the specifications.

HSQ Technology (HSQ) protests the award of a contract by the Navy to Atchison & Keller, Inc. under invitation for bids (IFB) N62477-79-B-0454 to provide and install an Energy Management Control System. The Navy found HSQ's bid nonresponsive, and HSQ contests this finding. We deny the protest.

An Energy Management Control System is comprised of field devices that "sense" environmental data and transmit the data by wire to communications link termination devices (CLTs). These CLTs provide the interface to the Central Control Unit, which is a computer that functions as the overall system coordinator, performing various automated management functions, controlling peripheral devices, performing calculations, etc.

The IFB included a requirement for the submission of descriptive literature with the bid covering various elements of the specifications. The requirement stated that the bid would be rejected if the descriptive literature failed to show that the product offered conforms to the specifications and other solicitation requirements. The Navy's technical evaluation board determined that HSQ's descriptive literature showed that the firm's system did not conform to four of the specification requirements, and the bid was rejected as nonresponsive. The Navy found that the literature (1) did not demonstrate that each CLT would handle no more than 25 percent of the system's total data in

that HSQ's drawing showed only three CLTs interfacing with the Central Control Unit, rather than at least four CLTs; (2) showed software that was inconsistent with the hardware proposed; (3) showed a valve without an auxiliary handwheel for manual operation as a self-contained unit; and (4) failed to include details about power surge protection capability.

HSQ disputes the Navy's conclusion on each point. We need only address the first.

The specification in issue states:

"The maximum percentage of points that any Data Transmission Media link terminating at the CLT may handle shall be no more than 25 percent of the system total. This percentage shall also apply to the links between the CLT and [Central Control Unit] regardless of location."

HSQ protests that its descriptive literature shows a capability for 18 data transmission lines, which obviously would exceed the 25 percent requirement.

HSQ, however, simply has not addressed the Navy's problem with the firm's literature in relation to this specification. The CLT block diagram furnished by HSQ indeed shows a capability for 18 Data Transmission Media links terminating at the CLTs, but it shows only 3 CLTs connecting to the Central Control Unit. HSQ has thus conformed to the first sentence of the specification by exceeding the 25 percent requirement as to Data Transmission Media links; however, the second sentence of the specification sets the same 25 percent requirement for links between the CLTs and the Central Control Unit, and HSQ has failed to show the minimum of 4 necessary to meet that 25 percent requirement.

Where, as here, descriptive literature is required with the bid to establish conformance with the specifications, and bidders are cautioned that nonconformance will cause the bid's rejection, a bid found nonconforming based on the literature furnished must be rejected as nonresponsive. See Sprague & Henwood, Inc., B-201028, April 6, 1981, 81-1 CPD 260.

Moreover, the protester has the burden to prove its case. Vanguard Industrial Corp., B-204455, January 6, 1982, 82-1 CPD 17. HSQ clearly has not met the burden of proving that the Navy's determination that its drawing did not conform to the specification in issue was erroneous or arbitrary. In this respect, a bid's responsiveness must be determined by the bidding documents themselves. Norris Paint & Varnish Co., Inc., B-200079, May 5, 1982, 82-1 CPD 425. Thus, even if HSQ's system has the capability in issue, the bid cannot be accepted if that fact is not apparent from the bid and the accompanying literature. Amray, Inc., B-201737, February 9, 1982, 82-1 CPD 116. The precise purpose for requiring descriptive literature with a bid is to afford the contracting agency a means to insure that the item offered as conforming to the specifications actually does so. See Fabcraft Inc., dba FABCO, B-186973, November 5, 1976, 76-2 CPD 384.

Therefore, since HSQ's bid failed to conform to the CLT specification, HSQ has not unequivocally offered to provide the items requested in total conformance with the specifications, which is the test in determining responsiveness. See Data Controls/North Inc., B-205726, June 21, 1982, 82-1 CPD 610. Since the bid was not responsive on that basis and thus could not be accepted, we need not consider the other areas of alleged nonconformance.

The protest is denied.

Milton J. Forster
for
Comptroller General
of the United States